 By Charles Wisniowski

Bill Rayburn, Chief Executive Officer, FNC Inc.

Bill Rayburn has been chief executive officer of Oxford, Mississippi–based FNC Inc.—a collateral-management technology company serving mortgage lenders—since the company began in 1999.

Rayburn is a former business professor at the University of Mississippi, Oxford, and is co-author of several books on collateral, including Sheshunoff Information Services' *Bankers Guide to Real Estate Appraisal Compliance* and *Uniform Standards of Professional Appraisal Practice: Applying the Standards.*

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More recently, Rayburn has emerged as one of the appraisal industry experts that are party to a growing debate over changes to appraisal practices contained in the upcoming Home Valuation Code of Conduct (HVCC).

In March 2008, New York Attorney General Andrew Cuomo announced an agreement with Fannie Mae, Freddie Mac and the Office of Federal Housing Enterprise Oversight (OFHEO) to establish the Home Value Protection Program. The program established significant changes to the real estate appraisal process for residential mortgage transactions and included a code of conduct that mandates appraiser independence and appraisal compliance to regulatory standards, among other new guidelines.

In December, OFHEO's successor agency, the Federal Housing Finance Agency (FHFA), released a revised final Home Valuation Code of Conduct applicable to mortgage lenders that sell residential mortgage loans to Fannie Mae and Freddie Mac.

Following a postponement from its original Jan. 1, 2009, start date, the HVCC is scheduled to take effect May 1.

Mortgage Banking recently spoke with Rayburn, and he shared his thoughts on the impact of the HVCC's provisions on the industry.

Q: *Where does FNC—and other companies like yours—come down on the Home Valuation Code of Conduct debate, and more broadly on the whole challenge of creating more appraisal independence?*

A: Of course the concept of independence for the appraiser is a very good thing. It's been [part of] banking regulations for a long time. Congress passed and the president [George H.W. Bush] signed back in August 1989, nearly 20 years ago, legislation called FIRREA—the Financial Institutions Reform, Recovery and Enforcement Act of 1989—that laid out a lot of [requirements to achieve] appraiser independence.

Now . . . with the Home Valuation Code of Conduct, we're simply seeing [those requirements] apply specifically to non-regulated institutions and, more particularly, to mortgage brokers.

Q: *What do you envision the impact on the industry will be if the HVCC in its current form takes effect as planned on May 1?*

A: Let's just talk about the impact on industry players. If we're talking about regulated institutions, I think there will be minimal impact except for a few changes in disclosure. If we're talking about what are today non-regulated institutions, they'll be some impacts—but in terms of regulated institutions, there will be very little impact outside of disclosure.

There is a little kicker in the disclosure requirements. As you know, today a regulated institution has to give the applicant a copy of the appraisal either on a routine basis or they have to give them notice of their right to a copy.

Under the Code of Conduct, you have to give the applicant a copy when it's completed, but in no less than three days prior to closing. Now, the applicant can waive their right to that, but that's a change for a regulated institution.

Q: *Critics of the traditional approach of allowing the originator to pick the appraiser contend that there was a widespread loss of confidence in the real estate appraisal process by consumers and especially by investors that was a major driver of the current mortgage crisis. Do you agree?*

A: I'm not sure I agree with that [premise]—that the appraisal process is the problem. There's certainly a lack of confidence in what the value of a particular property is. I absolutely agree with that. What I'm not sure I agree with is why did people lose confidence in [the assessments of] what the property was worth? So your house is allegedly worth $400,000—do you believe that or do you not believe that?

The question is, does having independence in the process between the originator and the appraiser solve the problem? I think it solves part of the problem, absolutely. However, appraisers measure value at a point in time, not necessarily two years [into] the future. But what you want to know as a homeowner is—"OK, it's worth X today; what's it going to be worth two years from now?"—and that's what an investor wants to know.

Q: *So in your opinion, was adoption of the HVCC necessary? Were the existing rules regarding appraisals deficient or did the industry simply not abide by the rules?*

A: These rules and regulations, the majority of them, have been around [for] a long time. So there is nothing really that new about the [HVCC].

What we're talking about is [that] for wholesale origination, these rules and regulations are very different. The broker now has to go through the [lending] institution or someone designated by the institution to order the appraisal.

Historically, what would happen is that the broker would order and engage the appraiser, get the report and send it to the institution. If the deal worked, then the loan closed and we were good to go. If it didn't, or if in some cases the broker was trying to perhaps get the fastest "yes" on the deal, the broker might send it to two or three institutions.

That goes to the whole issue of portability. That's why you saw brokers ordering a Fannie Mae 1004 Form [Uniform Residential Appraisal Report]—the full appraisal. Appraisers liked that in that they got their full fee, but it allowed the broker in essence to shop the loan.

Now, I'm a big proponent of brokers. I think they do a very good job, but it's just that the broker's job is to get the transaction closed and it's the appraiser's job to give an independent estimate of value.

To the extent the HVCC enables more independence in the process, then I think that's very good. I think for retail [lending] institutions, for regulated depositories, it's much ado about nothing.

Q: *In your discussions with lenders and industry executives, what are some of the most common questions or concerns that you are hearing?*

A: Well, . . . if you have a wholesale line of business as a lender, one of the big issues is how you are going to collect payment from the broker or, really, from the applicant. How are you going to do that?

And the second issue is how are you going to enable [appraisal] portability? So you go to Lender A, and for whatever reason you and Lender A or the broker and applicant and Lender A get into a snit—how do you go to Lender B and take that [appraisal] documentation to Lender B'

That's certainly permissible under the HVCC, but the practical aspects of that [are uncertain]. People are talking about this. They are talking about how are you going to be paid for the cost of the appraisal, how are you going to enable portability—the buzz word is "portability"—and then how are we going to manage the disclosure issues?

Those are the three key things—payment, portability and disclosure.

Q: *How are lenders preparing for the upcoming implementation of the HVCC?*

A: Most of them are going to do one of two things. They are either going to take a credit card at the time of application from the applicant and pay the appraiser when it's complete, or they are just going to get paid at closing and if [the loan] does not close they are probably going to eat that [expense]. That's a little difficult in today's environment because the fallout rate is a little high.

Q: *What do you see as the most significant flaw of the HVCC? What about it do you consider most worthwhile?*

A: What I do not like about it is that I think it's got a [different] disclosure requirement than Regulation B under the Equal Credit Opportunity Act. I think those are very different.

The OCC [Office of the Comptroller of the Currency] and all of the regulatory agencies have got [a] requirement that's a little bit different than the disclosure under the Code of Conduct.

So I think those disclosure requirements should be congruent. . . . That's the piece I don't like. The piece I do like the most is the idea of appraiser independence and reinforcing that.

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Will that solve all the problems? I don't think so, but will it go a long way?

There are some specific things listed in the Code of Conduct that [are spelled out and designed to foster more] independence—the use and compilation of a list of approved appraisers and who can actually make the selection. I think those are very positive steps in the right direction.

Does that go far enough to solve the problems in the mortgage market? No, but it's certainly a step in the right direction.

Q: *What would you say would be the next step?*

A: Well, I think very clearly . . . we need to put the loan documents in a file—all of the loan documents—and we need to share that with all market participants post-closing.

Let's take the document on one's house. When your lender put those together, those documents were put into a file and they were probably sent to the servicer, who collects your payment every month.

The investors downstream probably do not have those documents. So when they get ready to buy or sell that mortgage, they don't have the ability to have transparency or the ability to see those documents at loan level.

That would help the market tremendously. It's a little outside appraisal, but it's a big issue. The key issue is price discovery. There's no price discovery or very little today in the markets, and we need that to restart our secondary market.

Appraisal independence is a good first step. We need to put these documents in an electronic file folder and show them to all participants going downstream. **MB**

Charles Wisniowski is a senior correspondent for *Mortgage Banking*.